

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-210592

DATE: August 25, 1983

MATTER OF: Westinghouse Electric Corporation

DIGEST:

Protest of agency cancellation of a contract on basis that the award was improper, will not be considered where protester is not seeking GAO recommendation that contract be reinstated but is requesting recommendation that cancellation be converted to a termination for convenience, since that is matter for resolution under the Contract Disputes Act.

Westinghouse Electric Corporation protests the cancellation of a contract awarded it by the United States Information Agency (USIA) under invitation for bids No. 88-23-2-EA.

The solicitation sought bids on a number of power and special purpose tubes to be used by USIA in its Voice of America radio broadcasting facilities. Westinghouse was the low bidder on tube types 5682 and 7482. Paragraph 21 of the solicitation provided in pertinent part that:

" * * * The only known tubes that have proven to be satisfactory for use in agency equipment * * * for tube types 5682 and tube type 7482 are Machlett * * *. If the bidder proposes to furnish tubes other than those described above, he must be able to demonstrate a satisfactory history of recent operation for the tubes offered, in transmitters comparable to VOA in the same power and frequency range, in excess of the warranty hours stipulated in this solicitation."

The agency awarded a contract to Westinghouse to provide, among others, its own tube types 5682 and 7482, but it did not request or receive prior to award information regarding the performance history of the items.

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Subsequent to the award to Westinghouse, Machlett Laboratories, Inc. protested to the agency contending that the award was improper because Westinghouse had not provided the required information. The agency determined that the requirement for experience information was a matter of bid responsiveness and concluded that since Westinghouse had not submitted the information at bid opening, its bid should have been rejected as nonresponsive. Consequently, the agency canceled the contract with Westinghouse for these two tube types. Westinghouse protested the cancellation to this Office. The company also filed, and subsequently withdrew, an appeal with the Armed Services Board of Contract Appeals (ASBCA).

Westinghouse contends that USIA's nonresponsiveness determination was improper because the solicitation did not require submission of the experience information at bid opening. While Westinghouse initially sought our recommendation that the contract be reinstated, it now states that it "no longer desires reinstatement of the canceled portion of the contract" rather, it argues that "the GAO should recommend that the USIA properly terminate the canceled portion of the contract for the convenience of the Government." Westinghouse requests that we "confirm that the USIA's purported cancellation of the contract effected a de facto termination for the convenience of the Government."

We will not consider Westinghouse's protest. Under the circumstances here, the question of whether the agency's method of ending Westinghouse's contract should be characterized as a cancellation or a termination for convenience involves a matter relating to the contract and, therefore, must be resolved under the provisions of the Contract Disputes Act of 1978, 41 U.S.C. § 601-613 (Supp. IV 1980). We recognize that it is appropriate in some circumstances for us to review the procedures leading to the award of a subsequently terminated contract. See, e.g., Evergreen Helicopters, Inc., B-202962, September 28, 1981, 81-2 CPD 252; New England Telephone and Telegraph Company, 59 Comp. Gen. 746 (1980), 80-2 CPD 225. In those cases, however, review of the validity of the agency's procurement procedures was requested with a view towards a

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possible GAO recommendation that the terminated contract be reinstated. Here, Westinghouse no longer seeks reinstatement, but seeks conversion of the cancellation into a termination for convenience to enable Westinghouse to recover costs it claims to have incurred in anticipation of performing the contract and to arrange for the disposition of what it calls its "termination inventory." These matters are in the nature of a claim under the contract for monetary and other relief. We have taken the position that such matters are for processing under the Contract Disputes Act rather than for resolution by this Office. See Wall Irrigation Service, 61 Comp. Gen. 114 (1981), 82-1 CPD 100.

Accordingly, we dismiss the protest.

Harry R. Van Cleve
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Acting General Counsel